

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2594

To be argued by
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

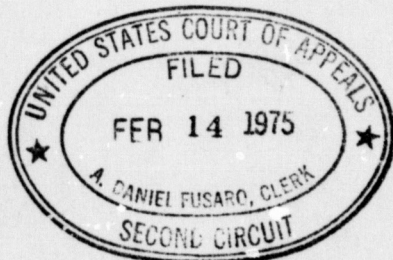
JACQUELINE DOZIER,

Appellant.

B.S.
Docket No. 74-2594

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
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SHEILA GINSBERG,
Of Counsel

PAGINATION AS IN ORIGINAL COPY

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
VS.	
MARY LOU DANTZLER and JACQUELINE DOZIER	
	For Defendant:
Did possess with intent to distribute cocaine	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		12/6/74	Notice of Appeal (No Fee)		
Clerk,			(Jacqueline Dozier)		
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
3-8-74	Before Mishler, Ch J - Indictment filed.
3-21-74	Before JUDD, J. - Case called - Defts and counsel present - Defts arraigned and enter pleas of not guilty - Bail contd as to both defts - Case adjd to 5-29-74 for trial
3-27-74	Notice of readiness for trial filed
4-17-74	Magistrates File 73M1860 inserted into CR file
5-29-74	Before JUDD, J - case called & adjd to July 3, 1974 (for trial)
7-15-74	Before JUDD, J - case called - defts & counsels present (Gutman of Legal Aid for deft DOZIER and counsel Dechter for deft DANTZLER) Defts motion to dismiss - motion argued and denied - case adjd to July 23, 1974 as to deft DOZIER for trial and to 9-16-74 for trial as to deft DANTZLER.

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
7-23-74	Before JUDD, J - case called & adjd to 9-16-74 at 10:00 A.M. for trial.		
9/16/74	Before JUDD, J.- Case called- Defts Docier present with counsel J. Gutman Deft Dantzler not present-Bench Warrant ordered for deft Dantzler Bench Warrant ordered is now vacated-Deft Dantzler present with counsel Deft Dantzler present with counsel-Deft Dantzler after being advised of her rights and on her own behalf withdraws her plea of not guilty and enters a plea of guilty as charged-The court is satisfied there is a factual basis for and accepts the plea-Bail cont'd-Case adjd to 9/19/74		
9-19-74	Before JUDD, J.- Case called- Deft JACQUELINE DOZIER and counsel present- ordered and begun-Jurors selected and sworn-Govt opens- Deft waives open Trial contd to 9-23-74 at 10:15		
9-23-74	Before JUDD, J - case called - deft & counsel present - trial resumed - Govt rests - defts motion ix to dismiss - motion denied - deft rests - Govt opens on rebuttal - Govt rests on rebuttal. Deft rests on Sur-Rebuttal Both sides rest - defts motion for Judgment of Acquittal - motion denied Govt sump up - deft sums up - trial contd to 9-24-74.		
9-24-74	Before JUDD, J.- Case called- Deft and counsel John Gutman of Legal Aid Trial resumed- Judge Charges jury- Marshals sworn- Alternates discharge Jury retires to deliberate- Jury returns at 3:40 P.M. to hear a modified Allen charge- Jury resumes at 3:42 P.M.- Jury returns at 4:35 to hear further charge-- Jury returns and renders a verdict of guilty- Jury poll Trial concluded--Jury discharged- Bail contd- case adjd without date for sentencing		
9-24-74	By JUDD, J.- Order of sustenance filed		
12/6/74	Before JUDD, J.- Case called- Deft DOZIER and counsel present- Deft sent to study and report pursuant to T-18, U.S.C. Sec. 5010(e) of the Y.C.A. Execution of sentence stayed pending appeal- Clerk to file notice of app in forma pauperis on behalf of deft - Deft: DANTZLER and counsel not pres Bench warrant ordered- stayed to 12/9/74 at 2:00 P.M.- At 2:30 P.M. deft DANTZLER and counsel preset- Deft sentenced to study and report pur to T-18, U.S.C. Sec. 5010(e)- Execution of sentence stayed to 12/17/74 at 12:00 P.M.		
12/6/74	Judgments and Commitments filed -certified copies to Marshal (BOTH DEFTS)		
12/6/74	Notice of appeal filed- with-out fee (DOZIER)		
12/6/74	Docket entries and duplicate of notice of appeal mailed to court of appe DATED		
12/10/74	Amended Judgment and Commitment filed (DANTZLER) LEWY		
12/24/74	Record on appeal certified and handed to John Gill for delivery to c of a BY		

TPP:JOB:sj
F# 735,148

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

----- X
UNITED STATES OF AMERICA

- against -

MARY LOU DANTZLER and
JACQUELINE DOZIER,

Defendants.
----- X

Cr. No. _____
(T. 21, U.S.C., §841(a)(1);
T. 18, U.S.C., §2)

74CR 162

THE GRAND JURY CHARGES:

On or about the 12th day of December 1973, within the Eastern District of New York, the defendant MARY LOU DANTZLER, aided and abetted by the defendant JACQUELINE DOZIER, did knowingly and intentionally possess with intent to distribute approximately 73.05 grams (gross weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

A TRUE BILL.

Anthony J. [Signature]
Foreman.

Edward J. Boyd II / [Signature]
UNITED STATES ATTORNEY

CHARGE OF THE COURT

THE CLERK: Criminal cause on trial
United States of America versus Jacqueline Dozier.

THE COURT: We are ready to go ahead with
the charge to the jury.

Good morning, ladies and gentlemen,
Mr. Dawson, Mr. Gutman and Ms. Dozier.

Ladies and gentlemen of the jury, we are
now at the stage where you have heard the evidence
and you have heard the arguments and it is my duty
to give you instructions as to the law before you
proceed. First I'll tell you the general prin-
ciples that apply to all criminal trials and then
something about the nature of the charges in this
case, and the specific rules of law that apply to
those charges, and something about how we evaluate
the evidence and how to reach a verdict. It's the
prosecutor's duty in our adversary system in
criminal justice to do his business, to present
the Government's case and defense counsel to do
his best to represent the defendant's interest.
The Court enforces the rules of evidence and the
jury decides the truth or falsity of the testi-
mony and the inferences to be drawn from the
evidence. Credibility is one of the real problems

CHARGE OF THE COURT

here.

It is your duty as jurors to follow the law as I state it in my instructions and apply those rules of law to the facts as you find them from the evidence in the case.

You are the sole judges of the facts. You are to perform your duty without bias or prejudice for or against any party. The law doesn't permit jurors to be governed by prejudice or by sympathy, or by public opinion.

The law presumes that a defendant is innocent of crime and so nothing but legal evidence presented before the jury can be considered in support of any charge against an accused. This presumption of innocence is enough in itself to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the guilt of the individual defendant on a particular count from all the evidence in the case.

I'll say just a few words about what the law means by a reasonable doubt.

A reasonable doubt is a sincere doubt based on reason and common sense arising from the state of the evidence, or from the absence of evidence..

CHARGE OF THE COURT

A reasonable doubt means a doubt that a juror asserts arbitrarily to avoid performing an unpleasant task. It doesn't mean a possible doubt. It's rarely possible to prove anything to an absolute certainty or beyond a possible doubt and the Court doesn't require this. Sometimes we describe proof beyond a reasonable doubt as referring to the type of doubt that would make you hesitate to act in your own important affairs, where you frequently have to make a decision after listening to different people's advice or information as to what they think are the facts. This rule of proof beyond a reasonable doubt operates on the whole case. It doesn't mean that each bit of evidence must be proved beyond a reasonable doubt. It means that the sum total of the Government's evidence plus all the other evidence in the case must satisfy you beyond a reasonable doubt as to each element of the crime charged or you must acquit. Finding a person to be guilty of a felony and subjecting her to criminal penalties is serious. You may consider this fact in deciding whether you have a reasonable doubt. Nevertheless, if you are convinced beyond a reasonable doubt of

CHARGE OF THE COURT

the defendant's guilt you must find her guilty and not be swayed by sympathy.

An indictment is just a formal method of accusing a defendant of a crime. I'm going to read it to you so you can know the charge. It's not evidence of any kind against the accused, and the fact that a Grand Jury made an indictment doesn't create any inference of guilt.

The defendant has pleaded not guilty in the indictment and that plea created the issues which you must decide.

The indictment charges that on or about the 12th day of December, 1973, within the Eastern District of New York, the defendant Mary Lou Danzler, aided and abetted by the defendant Jacqueline Docier, did knowingly and intentionally possess with intent to distribute approximately 73.05 grams gross weight of cocaine hydrochloride, a Schedule 2 narcotic drug controlled substance, in violation of Title 21, United States Code Section 841(a)(1). It is not necessary for the Government to prove exact amounts, if the figures are sufficiently approximate so the defendant knew by the indictment the nature and substance of the offense that was charged.

CHARGE OF THE COURT

1
2 Title 21 Section 841 says, "Except as
3 authorized by this sub-chapter it shall be unlaw-
4 ful for any person knowingly or intentionally to
5 manufacture, distribute or dispense or possess
6 with intent to manufacture, distribut or dispense
7 a controlled substance." Controlled substances
8 as defined in the United States Code includes
9 opium derivative and cocoa derivative, so cocaine
10 is a controlled substance under Schedule 2 of that
11 section. I'm not going to review the range of
12 penalties for the violation because although they
13 may be severe, it's for the Judge to consider the
14 extent of any penalty, whether there should be
15 imprisonment, fine.

16 The statute requires that the sale distri-
17 bution be made knowingly or intentionally and an
18 act is done knowingly if it's done voluntarily
19 and intentionally and not because of mistake or
20 accident or other reason. The purpose of the word
21 knowingly is to be sure that no one will be con-
22 victed for an act that's done because of mistake
23 or accident or other innocent reason.

24 The charge really as you analyze that in-
25 dictment is that Mary Lou Danzler was distributing

CHARGE OF THE COURT

the cocaine and that she was being helped by the defendant Jacqueline Docier; and Section 2 of Title 18 of the United States Code says, "Whoever commits and offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal." That means if a person helps somebody else commit an offense, the helper is just as liable as the one who does it, but the help must be intentional. In order to aid or abet the commission of a crime within the meaning of the statute, a person must associate herself with the criminal venture, participate in it and try and make it succeed. It's not just enough that Ms. Docier was there when cocaine was about to be delivered, not even if she knew at the last minute that it was cocaine. You must ask whether she associated herself with the venture, whether she participated in it as something she wanted to bring about or sought by her action to make it succeed. If she did, then she is an aider and abetter; and so a defendant doesn't need to do every act constituting the offense charged in order to be found guilty. If she knew beforehand that there was a cocaine transaction in the offering

CHARGE OF THE COURT

1
2 and she took the two men to the Kameo Theater
3 for the purpose of having cocaine passed there,
4 that was a helping; if she thought it was a
5 theater date and she was just going out with a
6 couple of men that would not be aiding and abetting
7 in the sale of cocaine.

8 I refer to the word knowingly, knowledge can
9 be proved by a defendant's conduct and by all facts
10 and circumstances surrounding the case. No person
11 can intentionally avoid knowledge by closing his
12 eyes to facts which should prompt him to investi-
13 gate; and so, knowledge can be established by direct
14 or circumstantial evidence just as any other facts
15 in the case, and you can consider the peculiarity
16 if you consider as such of going to a theater with
17 a couple of strange men without the one who intro-
18 duced him to you at 10:00 o'clock at night, in the
19 middle of the second show and see whether that is
20 a circumstance that implies knowledge that there
21 was a cocaine transaction to take place in an area
22 where Miss Docier, Sr. said cocaine was all over
23 the neighborhood, or whether it was just an adven-
24 turous girl who thought here was a chance to go
25 out, she had an older friend and she would have

CHARGE OF THE COURT

1
2 an interesting time. If you find from all the
3 evidence beyond a reasonable doubt either that
4 the defendant knew that she was helping in a
5 cocaine transaction, or that she had a conscious
6 purpose to avoid finding out the identity of the
7 substance so as to clear her eyes to the facts,
8 you could find sufficient evidence to find her
9 guilty beyond a reasonable doubt. But it's up to
10 you whether there is a reasonable doubt.

11 Now, on the evaluation of the evidence.

12 I said at the beginning that a defendant doesn't
13 have to testify and you can't infer anything if
14 she does not. The law does permit defendants to
15 testify on their own behalf, if they wish, and
16 you are to determine how far the defendant's own
17 testimony is credible. You could consider deep
18 personal interest that every defendant has in the
19 result of a case in weighing the testimony. To
20 some extent only Jacqueline Docier could defend
21 herself against the contention that she knew what
22 was going on and that she had gone along in order
23 to help find a safe place to distribute this
24 contraband.

25 A defendant who would help in selling

CHARGE OF THE COURT

1 cocaine would probably lie to protect herself but
2 she submitted herself to cross-examination, and
3 a defendant who testifies may well be telling the
4 truth. It's for you to weigh all those circumstances.
5 When you come to the evidence generally there is
6 both direct and circumstantial evidence. The loca-
7 tion of the theater, the acts of the various people,
8 the time and the place all have a bearing one way
9 or the other whether there was a purpose to aid
10 and abet in the transaction. Direct evidence is
11 the testimony of an eyewitness; circumstantial
12 evidence is the reference to a chain of circum-
13 stances that point to the existence or nonexistence
14 of certain facts. As a general rule the law makes
15 no distinction between direct and circumstantial
16 evidence.
17

18 Circumstantial evidence to establish guilt
19 doesn't have to exclude every reasonable hypotheses
20 of innocence. It's only necessary that the jury
21 be satisfied of a defendant's guilt beyond a reason-
22 able doubt on all the evidence in the case, both
23 direct and circumstantial. When you analyze the
24 evidence you could draw reasonable inferences
25 based on your own common and general experience

CHARGE OF THE COURT

1
2 from any facts that you find are proved. You are
3 not confined to the bare bones of the testimony
4 or exhibits and you don't leave your common sense
5 outside when you go into the jury room to deliberate,
6 but you can't decide anything just on guesswork or
7 speculation. You have to base your inference on
8 evidence in the case. It's the theory of American
9 justice that twelve citizens selected as nearly
10 as they can as a cross-section of the community,
11 without any previous bias, can best determine the
12 truth of a charge.

13 When you weigh the testimony of the various
14 witnesses you can consider their relationship to
15 the Government and to the defendant, the extent
16 to which they have any bias or interested in the
17 outcome of the case. You consider their manner
18 while they were testifying, their candor and
19 intelligence as you observed it. You could also
20 consider the extent to which any testimony has
21 been corroborated or contradicted by other credible
22 evidence, inconsistencies within the testimony of
23 any witness either on direct or cross-examination,
24 and whether any witness has changed his testimony.
25 If you believe a witness has lied on anything you

CHARGE OF THE COURT

1
2 could say we don't believe anything else he says
3 or you could say part of what the witness said
4 was true and part was not true. Where you find
5 inconsistencies in the testimony of witnesses
6 simply you could disregard the testimony or you
7 can accept it in part. A witness may have been
8 mistaken or untruthful with respect to parts of
9 his testimony and correct and truthful with respect
10 to other parts. There were inconsistencies between
11 the testimony of Mr. Bergman and Mr. Miller but you
12 can consider, if you go back and ask two people
13 about what happened and how close they were to a
14 parked car last Christmas week, whether you would
15 get the same answers from both of them and if they
16 were incorrect; if they were different, whether
17 one of them was lying, whether it was just a dif-
18 ferent recollection is the same thing, whether it
19 relates to a minor factor or to a major factor.

20 We had Government agents testifying with
21 respect to what the defendant told them in the car
22 and in the theater. You are not to give any greater
23 weight to their testimony because they work for the
24 New York City police of Drug Enforcement Agency.
25 They could be wrong or they may have been insensitive.

CHARGE OF THE COURT

1
2 to build up a strong case. Don't take anything
3 away from them. Just because they are Government
4 officers their testimony should be evaluated in
5 the same manner that you would evaluate the testi-
6 mony of any other witness.

7 And as counsels said you are not to decide
8 the case or any issue on the basis of the number
9 of witnesses or the number of questions. The
10 Government may have had more witnesses than the
11 defendant but you are to determine the quality of
12 the evidence and whether it has persuaded you be-
13 yond a reasonable doubt of the defendant's, or
14 whether there is a reasonable doubt.

15 A Judge has a right in the Federal Court
16 to comment on the evidence but it's been a fairly
17 short case and you have heard analyses by both
18 defense counsel and Government counsel, they
19 mentioned a few of the problems that you have to
20 decide in the course of my statement; and whatever
21 I've said about the evidence or the Government or
22 defense counsel said about the evidence, it doesn't
23 control, it's your recollection. If you remember
24 something different you could rely on that; if you
25 want further information about it we could as the

CHARGE OF THE COURT

1
2 court reporter to come back and read some of
3 the testimony to you when we get counsel together
4 and find the particular spot in the testimony if
5 you think you are going to need it. I use written
6 notes because the instructions to the jury are
7 important from the point of view of any appeal.
8 if there is a conviction, and because counsel have
9 a right to comment on what I've said afterwards
10 and ask for corrections if need be, and sometimes
11 also submit requests beforehand as to things to
12 be included in the charge.

13 Now, just a few words about reaching a
14 verdict. There is only one count in the indictment.
15 The answer is just guilty or not guilty but your
16 verdict must be unanimous. You all have to agree,
17 and I think it's a good idea to discuss the evidence
18 rather fully before you take a tentative vote so
19 that no one will be committed to hasty conclusions
20 before you study the entire case.

21 When you are in the jury room Miss Cannell,
22 Juror No.1, will act as your foreman. She should
23 try to be sure that everyone gets a chance to talk,
24 not more than one person talking at a time. Fre-
25 quently it will be times when somebody wants to

CHARGE OF THE COURT

1
2 interrupt and she will figure out how to handle
3 that, and she should help decide when you are
4 going to take a ballot. It's your deliberation,
5 you should assume the attitude of judges of the
6 facts that way you make a high contribution to
7 the administration of justice.

8 There will be a marshal outside the jury
9 room to whom you can give a note if you want any
10 further instructions or evidence. When you reach
11 a verdict you simply hand the marshal a note saying
12 you reached a verdict and when you come in court
13 Miss Cannell will record the verdict and either
14 party can have the jury polled. Each juror will
15 be asked whether she agrees with the verdict so
16 we can be sure it is unanimous.

17 In determining guilt or innocence, you
18 should not give any consideration of the matter of
19 punishment, that matter is exclusively a responsi-
20 bility of the Judge if the defendant is found guilty.
21 You are each entitled to your own opinion but you
22 should exchange views with your fellow jurors and
23 listen carefully to each other. You should not
24 hesitate to change an initial opinion if you are
25 convinced that another opinion is correct, but

CHARGE OF THE COURT

nobody has to give into the majority. Your final verdict must be your own.

I don't know how long you are going to need to reach a verdict, if it's going to run beyond the lunch hour we'll order some sandwiches and I'll have a menu sent in so you can arrange for that. The two alternates have not been needed, so Miss Graham and Miss Nagler will be excused and the rest of you can go into the jury room. If I call you out in the next few minutes it will be a sign to give you supplemental instructions, if not it's a sign that there is nothing that I think need to be corrected.

Now, the oath you took in the beginning sums up your duty without fear or favor to any person, you will well and truly try the issues between the parties according to the evidence given to you in court and the laws of the United States.

I don't see a marshal here this morning.

THE CLERK: He's on his way up now.

THE COURT: I'll excuse the alternate jurors now. Do you have their two cards? They better go back downstairs.

I don't think it's necessary for the jurors

1 to hear the oath of the marshals. He's sworn to
2 keep you in a safe and convenient place and not
3 permit anyone else to talk to you unless to ask
4 whether you have reached a verdict. I think you
5 should take the jurors into the jury room and
6 I'll swear in the marshal as soon as he gets here.

7 (Whereupon jurors were excused from
8 the courtroom)

1 MR. GUTMAN: I think the specific question
2 that the jurors are asking, do you have to know
3 it's drugs when you are aiding and abetting in a
4 drug case, and I think the answer is yes.

5 THE COURT: Except that knowledge may be
6 either actual knowledge or deliberately closing
7 your eyes.

8 MR. GUTMAN: The jury asked whether she
9 thought it was something else.

10 THE COURT: I'll give them a full answer.
11 I think I'll cover both. Bring them in.

12 THE CLERK: Jury note marked Court Exhibit 2.

13 (So marked)

14 (Whereupon jurors reentered courtroom
15 are now seated in jury box)

16 THE COURT: Miss Cannell, and ladies and
17 gentlemen, sorry I kept you waiting. It took
18 some time to get everybody together and do some
19 studying to make sure my answer would be as right
20 as I could make it. My experience has been jurors
21 ask experienced questions. "If the defendant went
22 there thinking there was an illegal transaction
23 but had no idea it was cocaine does this make a
24 difference?" I would say it does make a difference
25 to the extent there are different penalties for

1 different crimes, so I don't think aiding and
2 abetting in something less than drugs could justi-
3 fy a conviction here, but cocaine and heroin are
4 in the same category. If she believed it was drugs
5 but wasn't sure what kind, that wouldn't affect
6 her guilt of aiding and abetting; and what I said
7 about knowledge should be considered. Knowledge
8 may be proved by a defendant's conduct and by all
9 of the facts and circumstances surrounding the case.
10 No person can intentionally oppose knowledge by
11 closing her eyes to facts that should prompt her
12 to investigate. So in order to convict you have
13 to find either that she knew that some kind of
14 narcotic drug was involved not necessarily by the
15 time she went to the theater but by the time, if
16 you believe the Government agent's testimony, that
17 she reassured the Government agent that Mary Lou
18 would be coming, she must have either known that
19 either there was a narcotic drug involved or had
20 knowledge of sufficient facts that she was justi-
21 fying to prevent herself from having knowledge,
22 deliberately closing her eyes. I hope that will
23 help you to decide it. I understand that you have
24 not sent out for lunch yet.

25 THE CLERK: They have.

THE COURT: All right.

(Whereupon jurors were excused from
the courtroom)

(Continued on next page)

AFTERNOON SESSION

1
2
3 THE COURT: Mark this as a court exhibit.

4 THE CLERK: Jury note marked as Court
5 Exhibit .

6 (So marked)

7 THE COURT: I have your note and I am not
8 supposed to know what your vote is or which way
9 it is, but we have put in some time on the case
10 and I am just going to give you a few thoughts.
11 that we do think are appropriate where you have
12 a jury who has difficulty in reaching agreement.
13 The trial is not a long one. If you don't agree
14 on a verdict the case is left up and undecided,
15 and the defendant will still be subject to an open
16 charge and there is no reason to believe that the
17 case will be tried any better or more exhaustively
18 at some further day than it has been during this
19 period. Any future jury will have to be selected
20 the same way, the same sources that you were chosen
21 by and there is no reason to believe that another
22 twelve men and women are any more intelligent or
23 competent or that the evidence would be any dif-
24 ferent. So the task before us is one of conscious
25 decision that you are equipped to make. A jury

1 must not surrender his or her conscious convic-
2 tion, but it is your duty to consult with one
3 another with a view of reaching agreement if you
4 can do so without violence to individual judgment.
5 Elaborating on some of the things I said before,
6 each of you should -- part of the process of
7 individual decision is a consideration of the
8 evidence and the views of fellow jurors, and in
9 the course of your deliberation you should not
10 hesitate to reexamine your own views and change
11 your opinion if you are convinced it's erroneous.
12 You have to examine the question submitted to you
13 with candor, with frankness, with proper considera-
14 tion for one another's opinion. Each of you
15 should give attention to the views of others and
16 reinspect them, listen to the disposition of others
17 keeping your own views under continuing review.
18 Each juror ought to consider whether his own
19 appraisal of the weight of the evidence is a
20 correct one. Of course, disregard what counsels
21 said, remarks that I have made. It was 11:00 o'clock
22 this morning when I gave the case to you. You have
23 been together four hours, probably, leaving out the
24 lunch hour, but I think that you ought to stay at
25 it a little while more and sometimes around 4:30

1 or 5:00 if you haven't reached agreement let me
2 know, and then you can decide whether it is worth
3 staying any longer. I'm not going to hold you
4 over until tomorrow but I think you should make
5 another effort to reach agreement. Continue your
6 deliberations until such time as you believe
7 desirable. I'm not trying to exercise any com-
8 pulsion on anyone. I'm just saying that we will
9 lose the good of this trial and have to start it
10 over again before another twelve jurors if you
11 can't reach agreement now. So please go back and
12 put another hour or two and see if you can accom-
13 plish something.

14 (Whereupon court stood in recess)

15 (After recess)

16 THE COURT: One juror feels that there is
17 no way for anyone to make a decision regarding
18 anyone's guilt, this decision is reserved to God.
19 The juror will not discuss the case, the facts
20 or anything about it.

21 MR. DAWSON: I believe you also indicated
22 about following your instructions, whether it
23 would be anything to prevent them from following
24 your instructions.

25 THE COURT: Bring in the jury.

1 (Whereupon jurors entered the courtroom
2 are now seated in the jury box)

3 THE COURT: Miss Cannell, ladies and gentle-
4 men. I have your note that one juror finds that
5 there is no way for one person to make a decision
6 on anyone else's guilt, that decision is reserved
7 for God. I have sometimes excused people from
8 serving at all as jurors if they told me that
9 when they are summoned to serve. I didn't ask
10 the question that I sometimes ask, whether there
11 is any juror who would be unwilling or unable to
12 bring in a verdict of guilty if convinced of guilt,
13 or a verdict of not guilty if left with reasonable
14 doubt at the end of the case, but I did ask whether
15 there was any juror who knew any reason why he or
16 she couldn't fairly act as a juror in this case
17 and the one who is unwilling to decide should have
18 disclosed it at the time. The oath that you all
19 took, you and each of you do solemnly swear that
20 you will well and truly try this case before you
21 and a true verdict rendered. That means that you
22 promised to decide it and I think under those
23 circumstances it is necessary to reach a decision.
24 I can't force anybody to act contrary to his
25 religious beliefs in God, it's something that the

1 Court should have known before, and I think there
2 is a duty to make a decision, to vote one way or
3 the other. I'm not saying that you should give up
4 a vote that you believe in because you are in a
5 minority, but I do say you can't simply say, I'm
6 not going to vote.

7 I'm going to ask you to go back for another
8 half-hour to see what you can do. Please go back
9 to the jury room.

10 (Whereupon jurors were excused from the
11 courtroom)

12 THE COURT: Mark this as a court exhibit.

13 THE CLERK: Jury note marked as Court
14 Exhibit .

15 (So marked)

16 MR. DAWSON: It might be premature, should
17 the jury in the next half-hour be unable to reach
18 a verdict and in light of that most recent note
19 which goes to the very heart of the process, about
20 these last few days and indeed what the system is
21 all about, I would respectfully suggest to your
22 Honor perhaps an inquiry of the forelady after the
23 dismissal of the jury as to who on the jury was
24 the reason for that note, so that perhaps that
25 person might be relieved of the requirement of

1 further jury service, whether he or she would
2 have a balance of service this week and next
3 week and have serious questions about that per-
4 son's desire or ability to serve as a juror.

5 THE COURT: I heard the jury excuses and
6 I heard people say I'm not able to decide a case,
7 and I excuse them.

8 MR. GUTMAN: To make that statement might
9 embarrass the individual, it's a secret ballot.

10 THE COURT: I think the marshal may know
11 who it is. I'm not going to inquire of the fore-
12 lady. I may say something to that effect, but
13 anyone who has that view if the note accurately
14 expresses it --

15 MR. DAWSON: I'm concerned there may be
16 some further period of time that the juror may
17 finish.

18 THE CLERK: This panel is a holdover.

19 THE COURT: This group is finished. All
20 right.

21 (Whereupon court stood in recess)

22 (After recess)

23 THE COURT: The jury reached a verdict.
24 Bring in the jury.

25 (Whereupon jurors entered courtroom)

CERTIFICATE OF SERVICE

Feb 14, 1915

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

Sheila G. Rosenberg